

**IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA**

MARK ALLEN BANKS,

Plaintiff,

vs.

MICHAEL J. ASTRUE,  
Commissioner, Social Security  
Administration,

Defendant.

Case No. 11-CV-712-FHM

**OPINION AND ORDER**

Defendant's Motion to Strike Plaintiff's First Motion for Summary Judgment, [Dkt. 14] is before the court for decision.

Defendant argues that Plaintiff's First Motion for Summary Judgment filed on June 18, 2012, [Dkt. 13] should be stricken because a motion for summary judgment is not an appropriate vehicle for resolving Plaintiff's appeal of a final administrative decision denying his application for Social Security disability benefits. Plaintiff's response to the motion to strike was due on or before July 11, 2012. Plaintiff did not file a response to Defendant's motion.

The Commissioner is correct that a motion for summary judgment is an ill-suited mechanism for resolving Plaintiff's appeal. However, aside from styling his filing as a motion for summary judgment, Plaintiff's filing substantially complies with the instructions contained in the Scheduling Order. [Dkt. 8]. Therefore the court will consider Plaintiff's June 18 filing as his opening brief in this appeal. Defendant is relieved of the responsibility to adhere to the abbreviated briefing schedule attendant to a motion for summary judgment and the due date for Defendant's response brief remains October 22, 2012.

Plaintiff's counsel is advised that an opening brief in a Social Security disability appeal is not to be titled as a motion for summary judgment.<sup>1</sup> Doing so triggers deadlines in the docketing system that are not appropriate for an administrative appeal.

Defendant's Motion to Strike Plaintiff's First Motion for Summary Judgment, [Dkt. 14] is DENIED. Plaintiff's First Motion for Summary Judgment [Dkt. 13] will be considered as Plaintiff's Opening Brief and all deadlines related to that motion are STRICKEN. The parties will adhere to the dates set in the Scheduling Order filed March 19, 2012. [Dkt. 8].

SO ORDERED this 13th day of July, 2012.

  
FRANK H. McCARTHY  
UNITED STATES MAGISTRATE JUDGE

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<sup>1</sup> In this district, "[a]bsent leave of Court, each party may file only one motion [for summary judgment]." LCvR 56.1(a). It is, therefore, not appropriate to number motions for summary judgment.